

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELIZABETH SCOTT and	:	CIVIL ACTION
KARL SCOTT, h/w	:	
	:	
v.	:	
	:	
WALTER KIDDE PORTABLE	:	
EQUIPMENT, INC.,	:	
d/b/a KIDDE SAFETY	:	NO. 02-1460

M E M O R A N D U M

Padova, J.

August 12, 2002

This products liability case arises on Plaintiffs' use of a carbon monoxide detector designed and manufactured by Defendant Kidde Safety. On or about October 31, 2000 the detector allegedly failed and Plaintiff Elizabeth Scott inhaled high levels of carbon monoxide. Plaintiff Elizabeth sustained severe and permanent injuries, including damage to her brain and her nervous and circulatory systems. Before the Court is Defendant's Motion to Join Third-Party Defendants Alaska Company, Inc. ("Alaska") and Stermer Brothers, Inc. ("Stermer"). Alaska designed and manufactured and Stermer cleaned, inspected, and maintained the coal stove which allegedly emitted the injurious carbon monoxide. For the reasons that follow, the Motion is denied.

I. LEGAL STANDARD

Federal Rule of Civil Procedure 14 governs joinder of third-party defendants. Rule 14 provides, in pertinent part:

At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served

upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff.

Fed. R. Civ. P. 14(a). Courts construe Rule 14(a) liberally in the interest of judicial economy. See Monarch Life Insurance Company v. Donahue, 702 F. Supp. 1195, 1197 (E.D. Pa. 1989). The purpose of Rule 14 is to avoid "circuitry of action" and to settle related matters in one suit. Industrial Valley Bank & Trust Co. v. First Commercial Corp., No.86-1265, 1986 U.S. Dist. LEXIS 22526, at *5-6 (E.D. Pa. 1986); Tiesler v. Martin Paint Stores, Inc., 76 F.R.D. 640, 642 (E.D. Pa. 1977); Stiber v. United States, 60 F.R.D. 668, 670 (E.D. Pa. 1973). Leave to file a third-party complaint is within the sound discretion of the trial court. Shuba v. Conrail, Civil Action No.91-7735, 1992 U.S. Dist. LEXIS 9081, at *1-2 (E.D. Pa. 1992) (citing O'Mara Enterprises, Inc. v. Mellon Bank, 101 F.R.D. 668, 670 (W.D. Pa. 1983)).

In exercising its discretion, a court should consider the following factors: (1) the timeliness of the Rule 14 motion; (2) whether the filing of the third-party suit would introduce an unrelated controversy or unduly complicate the case at trial; (3) the likelihood and extent of delay in the trial; (4) whether the third-party complaint would avoid multiple litigation and settle related matters in one suit; (5) the merit of the third-party complaint, and finally; (6) the possible prejudice to the plaintiff. Industrial Valley Bank & Trust Co., 1986 U.S. Dist.

LEXIS 22526, at *6-7 (citations omitted). See also Equivest Dev. v. Travelers Indem. Co., Civil Action No.94-4661, 1994 U.S. Dist. LEXIS 17024, at *5-6 (E.D. Pa. 1994); Shuba, 1992 U.S. Dist. LEXIS 9081, at *1-2.

II. DISCUSSION

A. Defendant's Third-Party Claim

Under Rule 14, a third-party defendant cannot be joined simply because that party may be liable to the plaintiff. Bike v. American Motors Corp., 101 F.R.D. 77, 78 (E.D. Pa. 1984). This is because the plaintiff has a right to choose the party against whom he or she wishes to institute an action; a defendant cannot compel a plaintiff to sue a third party by asserting in a third-party complaint direct liability between the plaintiff and the third-party defendant. Feinagale v. Pittsburgh & Lake Erie Railroad Co., 595 F. Supp. 316, 318 (W.D. Pa. 1983). A defendant may only use Rule 14 to implead a third-party defendant where the third-party defendant is or may be liable to the defendant "derivatively or secondarily, and not to join a person who is or may be liable solely to the plaintiff." DeMaio v. Cigna Corp., Civil Action No.89-0724, 1990 WL 117976, at *2 (E.D. Pa. Aug. 9, 1990). Accordingly, the basis for third-party liability is generally either contribution or indemnity. Anderson v. Dreibelbis, 104 F.R.D. 415, 416 (E.D. Pa. 1984), aff'd, 787 F.2d 580 (3d Cir. 1986).

Defendant's third-party complaint seeks contribution from Alaska and Stermer. (Def.'s Mot. ¶ 9). Under Pennsylvania law, the right to contribution arises only among joint tortfeasors. Schiele v. Simpson Safety Equip., Inc., Civil Action No.91-1872, 1992 U.S. Dist. LEXIS 4236, at *7 (E.D. Pa. Apr. 7, 1992); TVMS v. Alexander & Alexander, Inc., 583 F. Supp. 1089, 1092 (E.D. Pa. 1984); Lasprogata v. Qualls, 397 A.2d 803, 805 n.2 (Pa. Super. 1979). Joint tortfeasors are "two or more persons jointly or severally liable in tort for the same injury to persons or property." 42 Pa. Cons. Stat. Ann. § 8322 (West 1998). The parties must either act together in committing the wrong, or their acts, if independent of each other, must unite in causing a single injury. Schiele, 1992 U.S. Dist. LEXIS 4236, at *8 (citing Lasprogata, 397 A.2d at 805 n.2).

In this case, the parties agree that the actions of Defendant Kidde Safety and of proposed Third-Party Defendants Alaska and Stermer were independent. The parties have not cited, and the Court has not found, any Pennsylvania case law involving two allegedly defective products causing a single injury. Examining the current case law, the Court notes that it is not entirely clear, on the record currently before the Court, whether the Defendant and proposed Third-Party Defendants would be considered joint tortfeasors.

Under Pennsylvania law, independently acting parties may be considered joint tortfeasors if their tortious actions unite to cause a single injury. Schiele, 1992 U.S. Dist. LEXIS 4236, at *8; Kelly v. Nicholson, Civil Action No.91-6252, 1992 U.S. Dist. LEXIS 6482, at *2 (E.D. Pa. 1992). The only way for two independently acting parties to be joint tortfeasors, however, is if they cause a single injury that cannot be apportioned. Schiele, 1992 U.S. Dist. LEXIS 4236, at *9 (citing Capone v. Donavan, 480 A.2d 1249, 1251 (Pa. Super. 1984)). "If the acts of the parties are severable as to time, and neither has the opportunity to guard against the other's acts, and each breaches a different duty to plaintiff, the parties cannot be considered joint tortfeasors." Schiele, 1992 U.S. Dist. LEXIS 4236, at *8; TVMS, at 1092; Lasprogata, at 805. See also St. Thomas v. Harrisburg Hospital, 108 F.R.D. 2, 4 (M.D. Pa. 1985). Moreover, a party whose actions cause an injury and a party whose actions aggravate that injury are not generally considered joint tortfeasors. Lasprogata, at 805.

At this time, the Court lacks sufficient information regarding the injury to determine whether or not Defendant and the proposed Third-Party Defendants are joint tortfeasors under Pennsylvania law.¹ However, examining the Rule 14 factors for allowing joinder, the Court determines that even if the Defendant

¹For example, it is unclear on the facts currently before the Court that the injury is not divisible.

and the proposed Third-Party Defendants are joint tortfeasors, joinder in this instance should be denied.

B. Rule 14 Joinder

There is no serious question that Defendant's third-party complaint is timely, Collins v. General Motors Corp., 101 F.R.D. 4, 6-7 (W.D. Pa. 1983), and is not frivolous. Rather, Plaintiffs' primary argument against joinder under Rule 14 is that it will unduly complicate the case.

Joinder of a third-party defendant under Rule 14 is proper if: the evidence and witnesses with respect to the third-party claim are the same as the evidence and witnesses in plaintiff's claim; the third-party claim involves substantially the same facts and parties as plaintiff's claim; and the questions of law involved in the third-party claim are substantially the same as plaintiff's claim. Industrial Valley Bank & Trust Co. v. First Commercial Corp., No.86-1265, 1986 U.S. Dist. LEXIS 22526, at *10 (E.D. Pa. 1986) (denying a motion to join a third-party defendant because plaintiff's complaint was "materially different than defendants' third-party complaint . . . which involve[d] a complicated set of parties, circumstances and proof."). See also Equivest Dev. v. Travelers Indem. Co., Civil Action No.94-4661, 1994 U.S. Dist. LEXIS 17024, at *6-7 (E.D. Pa. 1994) (dismissing third-party joinder because the action filed by plaintiff was simple but joinder would force the court to consider additional

insurance policies and facts that would "immensely complicate this action and create undue delay and expense for all parties."); Fuel Transp. Co., Inc. v. Fireman's Fund Ins., 108 F.R.D. 156, 158 (E.D. Pa. 1985) (permitting the joinder of one third-party defendant because the primary complaint and third-party complaint center on the same "relatively straightforward contract questions" while denying the joinder of two other third-party defendants to avoid the new issue of fault that would "unduly complicate the case").

Plaintiffs argue that the witnesses and evidence against Alaska and Stermer are "unrelated and complicated." (Pls.' Resp. at 8). Plaintiffs contend that the "emission of CO, its source, and cause of emission" remain "wholly irrelevant to Plaintiffs' claims against Kidde," and that the causes of action against Kidde Safety, Alaska, and Stermer "involve different theories of liability, different duties, different facts, and different evidence." (Pls.' Resp. at 5-6). Plaintiffs argue that joinder of Alaska and Stermer "necessitates the introduction of additional, unrelated evidence, the investigations and opinions of additional experts, new theories of liability unrelated to Plaintiffs' theories against Kidde Safety, new witnesses, and the potential concept of comparative negligence." (Pls.' Resp. at 8).

The Court disagrees that all of the evidence relating to the source of carbon monoxide is totally irrelevant if Alaska and Stermer are not joined. "Indeed, as part of Plaintiffs' case, they

will have the burden of proving that a detectable level of carbon monoxide existed int [sic] the house. Proof of the source of the carbon monoxide will likely be admitted in Plaintiff's [sic] case-in-chief." (Def.'s Reply at 5). However, the extent of that proof will be less than if the proposed Third-Party Defendants are joined. Although Plaintiffs must prove that there was carbon monoxide, for example, they will not need to prove that Alaska and Stermer were negligent. As a result, the evidence, witnesses, facts, and questions of law would all be substantially different if joinder were allowed.

Similarly, the inclusion of this additional evidence presents a real danger that a jury would be unnecessarily and unduly confused. Defendant cannot escape total liability from the damages caused by its allegedly defective product merely by proving that another party contributed to the damages, yet the effect of joinder would be the introduction of evidence not a direct part of the proof of Plaintiffs' liability case against Defendant. Joinder would also unreasonably burden Plaintiffs with additional expense and inconvenience. See Industrial Valley Bank & Trust Co., 1986 U.S. Dist. LEXIS 22526, at *17-18 (denying joinder because "(1) the two causes of action are only partially related; (2) there will be a considerable delay in the trial if joinder is permitted; (3) there will be a complication of issues at trial if joinder is permitted, and; (4) there will be additional expense and

inconvenience to the parties if joinder is permitted."). The complications and additional evidence and discovery would delay the progression of the trial and would prejudice Plaintiffs.

Finally, joinder of Defendant's contribution claim would not avoid "circuitry of action" and would not settle related matters in one litigation as Rule 14 intends. See Industrial Valley Bank & Trust Co., 1986 U.S. Dist. LEXIS 22526, at *5-6. Because Plaintiffs and proposed Third-Party Defendants Alaska and Stermer are all Pennsylvania residents, the Court would not have diversity jurisdiction over any direct claims Plaintiffs might have against Alaska and Stermer. Under these circumstances, all related matters would not be settled in one litigation even if joinder were permitted. Similarly, if the Court were to allow joinder but bifurcate the proceedings, the third-party complaint would not avoid multiple litigation.

Considering all of the Rule 14 factors, the Court determines that the factors weigh against the exercise of the Court's discretion to allow joinder. The addition of the proposed Third-Party Defendants would introduce into this action significant unrelated or marginally related evidence and questions of law that would complicate and delay the proceedings and increase the risk of juror confusion. Moreover, joinder here would not settle the entire matter in one proceeding, which is a goal of Rule 14.

Accordingly, joinder in this instance is denied. An appropriate Order follows.

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WALTER KIDDE PORTABLE	:	
EQUIPMENT, INC.,	:	
d/b/a KIDDE SAFETY	:	NO. 02-1460

O R D E R

AND NOW, this 12th day of August, 2002, upon consideration of Defendant's Motion to Join Third-Party Defendants Alaska Company, Inc. and Stermer Brothers, Inc. (Docket No. 12) and all supporting and responsive briefing thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

John R. Padova, J.